

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

CRL.A.No. 1414 of 2006()

AGAINST THE ORDER IN CRLP.357/2006 Dated 21/07/2006
ST.20/2006 of JUDICIAL FIRST CLASS MAGISTRATE-II VARKALA.
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APPELLANT:

FAIZAL VAHID, S/O. ABDUL VAHID,
KOTTUVILAKAM HOUSE, ODAYAM DESOM,
VARKALA VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.GEORGE MULLENKUZHIYIL

RESPONDENTS:

1. NARSHAD HUSSAIN, WEST PARIYAVILA,
KURAKKANNI DESOM, VARKALA VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR.

BY ADV. SRI.PRAKASH P.GEORGE
SRI.B.PREMNATH
SRI.BOBAN VARGHEESE
BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 13/02/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 1414 of 2006

Dated this the 13th February, 2007.

J U D G M E N T

The complainant in S.T.No.20/2006, on the file of the Judicial First Class Magistrate Court-II, Varkala, is before this Court with this appeal, having filed after obtaining leave of this Court, challenging the impugned order, dated 17.5.2006, of the court below, through which the learned Magistrate has dismissed the complaint, for the non-appearance of the complainant or his pleader.

2. The learned counsel appearing for the first respondent, accused, has submitted the sequence of events that took place, right from the time, when the case was filed in the year 2004, before the Judicial First Class Magistrate Court-I, Varkala, and subsequent transfer of the same to the Judicial First Class Magistrate Court-II, Varkala. The counsel has also gave me the full details of the posting dates and the non-appearance of the complainant on some of the posting dates. It is also brought to my notice that, a Criminal Complaint No. 200/SS/2004, is pending before the Metropolitan Magistrate, 12th Court, Bandra, Mumbai, between the same parties, on an another transaction. The Apex Court, through Transfer Petition

(Crl.) No.382/2005, had transferred the case from Bandra Court, Mumbai, to the Judicial First Class Magistrate Court-II, Varkala, to be tried and disposed of by that Court, in accordance with the law.

3. During the pendency of the case with the Judicial First Class Magistrate Court-II, Varkala, it was dismissed. Counsel for the first respondent, accused, submits that the dismissal took place due to the lapse on the part of the complainant himself. On perusal of the records, I find that the arguments of the learned counsel for the first respondent, accused, cannot fully be brushed aside.

4. Nevertheless, considering that the parties be given an opportunity to adduce evidence, so that the matter could be disposed of, on merit, I set aside the impugned order, dated 17.5.2006, and restore S.T.No.20/2006, on the file of the Judicial First Class Magistrate Court-II, Varkala, on payment of cost of Rs.5000/=. The cost shall be paid, within two weeks from today, by the complainant to the counsel for the first respondent, accused, and a memo to that effect shall be filed before the court below.

5. The parties shall appear before the court below on 19.3.2007.

6. This being an old matter, the learned Magistrate shall give priority for the disposal of the same, and, in any case, it shall be disposed of, within three months from the date of appearance of the parties. The learned Magistrate shall ensure that the cost is paid, as directed above, within the period stipulated.

Criminal Appeal is allowed accordingly.

**J.M. JAMES,
JUDGE**

nj.